IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 25686 of 2006(G)

PETITIONER:

L. THYCHERI, (CONDUCTOR, K.S.R.T.C., CHANGANASSERY DEPOT, UNDER ORDERS OF REMOVAL FROM SERVICE) THYCHERIL HOUSE, KURISINMOODU P.O., CHANGANACHERRY, KOTTAYAM DISTRICT.

BY ADV. SRI.K.P.RAJEEVAN

RESPONDENTS:

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1. KERALA STATE ROAD TRANSPORT CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM.

2. THE EXECUTIVE DIRECTOR (VIGILANCE), KSRTC, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM.

3. THE APPELLATE TRIBUNAL, KSRTC, TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM.

4. DISTRICT TRANSPORT OFFICER, K.S.R.T.C., CHANGANASSERY.

BY ADV. SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.25686 OF 2006

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF CHARGE SHEET DT.15.4.02 ISSUED TO PETR. BY R2.

EXT.P2 – TRUE COPY OF WRITTEN STATEMENT DT.22.4.02.

EXT.P3 – TRUE COPY OF SHOW CAUSE NOTICE DT.24.7.02 WITH ENQUIRY REPORT.

EXT.P4 – TRUE COPY OF ORDER DT, 20.9.02.

EXT.P5 – TRUE COPY OF APPEAL MEMORANDUM DT.30.9.02.

EXT.P6 – TRUE COPY OF ORDER DT.14.10.04.

EXT.P7 - TRUE COPY OF REVISION PETITION DT.29.3.05.

EXT.P8 – TRUE COPY OF ORDER DT.8.5.06

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.25686 OF 2006

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DATED THIS THE 27th FEBRUARY, 2007

J U D G M E N T

A conductor in the service of the K.S.R.T.C. attached to its Changanassery Depot under orders of removal from service is the petitioner. The K.S.R.T.C., the Executive Director (Vigilance), the K.S.R.T.C. Appellate Tribunal and the District Transport Officer, Changanassery are respectively the respondents. The grievance of the petitioner is that he was removed from service by the disciplinary authority, the 2nd respondent under Ext.P4 order on the basis of a totally false report. Ext.P1 is copy of the charge sheet dated 15.4.2002 issued to the petitioner by the 2nd respondent and the charges are of gross misconduct, dereliction of duty and misappropriation of Corporation revenue. Ext.P2 is copy of the reply in which the petitioner denies the charges completely. A full-fledged enquiry was conducted and on the basis of the report in which the petitioner was found to be guilty, Ext.P3 show-cause notice was issued to him. To Ext.P3 the petitioner submitted explanation. Nevertheless, Ext.P4 order removing him from service was issued. Against Ext.P4, the petitioner submitted Ext.P5 appeal before the 1st respondent. The 1st respondent-Appellate Authority dismissed the appeal and

Ext.P6 is copy of the order. Against Ext.P6, the petitioner preferred Ext.P7 revision petition before the 3rd respondent-Tribunal. The Tribunal also dismissed the revision and Ext.P8 is the order. The petitioner impugns Ext.P8 on various grounds and prays that Ext.P4, P6 and P8 be quashed and it be declared that the petitioner is entitled to have the period from the date of his suspension till date of superannuation treated as duty. The petitioner also prays for writ of mandamus directing release of all the retiral benefits.

2. On behalf of the K.S.R.T.C. a detailed counter affidavit is filed. It is stated therein that on 25.2.2002 the petitioner, conductor of Changanassery Depot was operating Changanassery-Thirunelveli Fast Passenger Service and on the way Sri.S.Nalinakshan, Inspector, Punalur boarded the bus for inspection and detected as many as seven irregularities:

"1. issued dead tickets worth Rs.13/- each to five passengers who had boarded the bus from Alamkulam (FS.22) instead of Rs.9 each;

2. issued one ticket worth Rs.13/- which was already sold on 6.2.2002 to a passenger who had boarded from Paravoor (FS21) to Thirunelveli (FS.23);

3. issued six unmarked tickets worth Rs.16/- each to six passengers who had boarded from Thenkasi and bound to Thirunelveli;

4. issued five luggage dead tickets worth Rs.10/- each to five passengers who had boarded from FS20 to FS 23 whereas the actual fare was Rs.16/-.

5. issued two dead tickets worth Rs.17/- each to two passengers who boarded the bus from FS 20 to FS 23.

6. issued two dead tickets worth Rs.16/- each to two passengers who had boarded the bus from FS 20 to FS 23;

7. possessed 14 dead tickets in the cash bag; on verification it was revealed that the conductor was in the habit of getting back the issued tickets from the passengers on alighting and re-issuing the same to others on subsequent journeys."

The counter affidavit points out that the above acts amount to gross misconduct and dereliction of duty and misappropriation of Corporation revenue and this was why the petitioner was proceeded against under Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960. A full-fledged enquiry was conducted and report was obtained. The enquiry officer found the petitioner guilty of the charges levelled against him. The disciplinary authority on a perusal

of all the records including the detailed enquiry report agreed with the findings of the enquiry officer. Since the proved charges were so serious in nature, a show-cause notice was issued to the petitioner proposing to remove him from service with effect from the date of suspension and reply was obtained. On a perusal of the explanation, the disciplinary authority found that there is no ground for reconsidering the proposed punishment. The disciplinary authority was fully convinced that the retention of such a person in service is highly detrimental to the interest of the Corporation. In the circumstances, the proposed punishment was confirmed and the petitioner was removed from the services of the Corporation with effect from the date of suspension. The appeal filed by the petitioner before the Managing Director of the Corporation was rejected by order dated 14.10.2004. Against that order revision was filed before the Appellate Tribunal which dismissed the revision petition.

3. Mr.K.P.Rajeevan, learned counsel for the petitioner would make fervent submissions. Counsel submitted that domestic enquiry was conducted in gross violation of principles of natural justice. Even when the Inspector was examined as a witness, the petitioner was directed to wait outside. Counsel submitted that the statements of

the passengers to whom dead tickets were allegedly issued together with their names and addresses were not taken by the Inspector. Referring to the Manual of Rules and Instructions for the Guidance of the Operating Staff of the State Transport Department, counsel submitted that it is mandatory on the part of the Inspectors to collect the names and addresses of the person or persons involved in ticket irregularity cases. Rule 102 of the Manual was highlighted before me by Mr.Rajeevan who submitted that in this case though the allegation is of ticket irregularity, the Inspector who reported the matter had not taken any statement from the passengers or even recorded the names and addresses of the passengers concerned. This aspect was not at all considered by the disciplinary authority and the appellate authority. There was no such ticket irregularity and the Inspector who made a false report against the petitioner did not take statement or note the names and addresses of the passengers lest the same should falsify his report. Because of this crucial aspect, the entire disciplinary proceedings have become vitiated. The observations of the Tribunal in Ext.P8 in the context of the above argument of the petitioner came up for sharp criticism at the hands of Mr.Rajeevan. Counsel referred to clause 8 of the Government Notification No.4936/TC4/65/PW dated

22.3.1965 by which all existing rules of the then Transport Department have been made applicable to the Kerala State Road Transport Corporation. According to learned counsel, the Tribunal is clearly in error when it said that the Manual for the Guidance of the Operating Staff is not applicable. Sri.Rajeevan submitted lastly that in any event the punishment imposed on the petitioner is highly disproportionate with the gravity of the offences found against him.

4. Sri.K.Prabhakaran, Standing Counsel for the K.S.R.T.C. would meet all the submissions of Mr.Rajeevan. Learned Standing Counsel submitted that the order of the disciplinary authority has been confirmed by the appellate authority and further confirmed by the revisional authority who was a District Judge. The order of the revisional authority does not warrant any correction at all in judicial review. The Manual for the Guidance of the Operating Staff relied on by the petitioner will not come within the purview of Clause 8 of the Government Notification No.4936/TC4/65/PW dated 22.3.1965 and at any rate cannot get priority over the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 which are rules coming within the purview of Article 309 of the Constitution of India. In the instant case disciplinary proceedings were conducted by the

Corporation strictly in accordance with the the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960.

5. I have considered the rival submissions made at the Bar. The submission of Mr.Rajeevan that the Manual for the Guidance of Operating Staff relied on by the petitioner is not to be ignored by the Corporation and that the notification (No.4936/TC4/65/PW dated 22.3.1965) has been issued in exercise of the powers under Section 34 of the Road Transport Corporation Act cannot be said to be without force. But, at the same time, having gone through the orders of the disciplinary authority and the appellate authority which have now been confirmed by Ext.P8 order of the revisional authority (the K.S.R.T.C. Appellate Tribunal), I am of the view that the findings of fact entered in those orders do not warrant any interference at all. It cannot be said that those findings are not supported by any evidence. There was evidence including circumstantial evidence in support of those findings. Having regard to the narrow contours of this Court's powers of judicial review in disciplinary proceedings, I am of the view that Ext.P8 is not liable to be interfered with except to the extent of the punishment of removal which has been imposed on the petitioner.

6. I find from Ext.P8 that the petitioner's case that this was the

first instance of his facing charge of ticket irregularity was not approved by the Appellate Tribunal. The Tribunal noticed that there were previous instances of ticket irregularities in the back records pertaining to the petitioner. I am inclined to accept the submission of Mr.Rajeevan that those irregularities unlike the present one were trivial ones and that it is only in the present one the petitioner was charge sheeted and a full-fledged enquiry was conducted against him. Punishment of removal from service imposed on the petitioner who had completed 26 years of service, I feel, was a little on the high side.

7. Under these circumstances, even as I endorse the findings in the enquiry report by the K.S.R.T.C. Appellate Tribunal, I interfere with Ext.P8 and the orders of the disciplinary authority and the appellate authority to the extent punishment is imposed on the petitioner, by directing that the punishment of removal from service will stand modified as punishment of compulsory retirement with effect from the date of suspension order.

The Writ Petition is allowed to the above extent.

tgl **(PIUS C. KURIAKOSE, JUDGE)**